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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Letter dated 12 March 2002 from the Counsellor for Political Affairs of the
Permanent Mission of the United States of America to the United Nations
Office at Geneva addressed to the Office of the United Nations High
Commissioner for Human Rights**

The enclosed document^{*} is intended as an observation related to the report of the Special Rapporteur on the right to education on her mission to the United States, which is to be submitted to the fifty-eighth session of the Commission on Human Rights as document E/CN.4/2002/60/Add.1.

Please process the enclosed as an annex to a Commission on Human Rights document.

(Signed): Cheryl J. SIM
Counsellor for Political Affairs

^{*} Reproduced as received, in the language of submission only.

Annex

The USG welcomes the opportunity to respond to the finalized report of Ms. Katarina Tomasevski, Special Rapporteur (SR) on the Right to Education. The U.S. Department of State has prepared this response with guidance from several agencies including the Department of Education (DOE), the Department of Justice (DOJ) and the Department of Labor (DOL).

The report contains many factual inaccuracies, and numerous statements in strong emotional language that are presented without supporting evidence. The report implies that the problem of inequality in U.S. education has been caused by the lack of U.S. federal government action. In addition, the report pays insufficient attention to the way education is organized in the United States or the consequent roles of federal, state, and local governments in the process of education. Further, the report makes no mention of the hundreds of billions of dollars that the federal government has spent during the past decades through dozens of different approaches to compensatory education. A more accurate analysis would portray inequality as persisting despite federal government action.

The United States Government (USG) offers the following observations:

SECTION I. THE CONTEXT: AFTERMATH OF 11TH SEPTEMBER

Regarding the isolated incidents of hate crimes against Muslim Americans that the Special Rapporteur witnessed during her visit, the USG would like to provide an updated picture of this situation. Widespread violations of civil liberties have not occurred in the United States and civil liberties groups have been closely monitoring the rights of Arab immigrants and Arab and or Muslim Americans detained for questioning. The President and the Department of Justice (DOJ) have made it clear that it is unacceptable to perpetuate any acts of violence against Muslim Americans. The DOJ has been actively prosecuting individuals for hate crimes against Muslim Americans. In addition, many Arab Americans and Muslim Americans have said that they have experienced spontaneous demonstrations of friendliness from Americans, counterbalancing isolated cases of bigotry.

SECTION II. HISTORICAL BACKGROUND AND CURRENT INITIATIVES

The USG plays a significant role in education. The major responsibilities for education (such as funding, curriculum, teacher certification...), however, lie within the states' jurisdiction. Moreover, the Bill of Rights (i.e., the legal foundation of the concept of human rights in this country), which covers political and legal rights, does not refer to education as either a human right, or a responsibility of the federal government.

A. The Heritage of Free Public Education

Religious instruction was a goal of U.S. common schools in the seventeenth and eighteenth centuries. However, we are not aware that this has persisted as a primary goal into the nineteenth century. The sentence, "Some southern States allowed their children to be withdrawn from racially mixed schools," incorrectly implies that parents applied to the state to determine where they could send their child to school. A better way to say this would have been: "Some parents chose to send their children to private schools rather than enroll them in racially mixed public schools."

The SR's discussion on the role of the federal government should have made a clearer distinction between the various parts of the federal government, as roles and attitudes vary considerably between the executive, legislative, and judicial branches. Although states and individual school districts have a primary responsibility for education, the federal government plays an important role in ensuring equal access and promoting educational excellence. Approximately 7 percent of the total national K-12 public education budget is provided by the various agencies of the federal government. The U.S. Department of Education administers the vast majority of these funds. Congress allocates the funds through hundreds of programs that seek to improve education in a variety of ways, such as providing additional resources for schools with high concentration of low-income students. Before 1979, the functions of the Department of Education were performed within the Office of Education in the Department of Health, Education, and Welfare. It is important to note that the federal government played a significant role in education even before the creation of the Department of Education as a separate office. The time-honored and well-accepted roles of the federal government in education include: enforcing civil right laws; providing funds for schools educating the disadvantaged (nearly 10 billion dollars last year); conducting research; gathering statistics; providing incentives for innovation; and providing substantial financial assistance to low and moderate income students so that they may attend college.

B. Changing Administrations, Changing Priorities

For the past decade, the official motto of the Department of Education, emblazoned on all official materials and buildings has been: "Our mission is to provide equal access to education and to promote educational excellence throughout the nation." This motto reflects the realization that focusing on equal access without regard to quality will not solve the problem of inequity. The Special Rapporteur's statement that a well-designed and well-funded education system could solve the problems of schools in inner-city ghettos is simplistic. Although the feminization of the teaching profession may create difficulties in dealing with boys, the violence that occurs in schools and communities is a result of a complex interplay of risk factors and the environment. Additionally, the federal government has made a major multi-agency investment in preventing school violence. There are also a number of centers that have been addressing this issue.

The USG would like to clarify that the advocates for leaving the public schools to avoid integration did not represent the mainstream public education system or the government. Also, selection and segregation were not an official or publicly respected goal of education in the 1980s. The vast majority of white children were still enrolled in public schools. Presenting statistics on the actual percentages of students in private schools during the 1970s and 1980s would more accurately reflect the true situation.

The federal and state governments have spent billions of dollars on Title I and other compensatory education programs for low-income children. (Title I, Part A provides assistance to improve the teaching and learning of children in high-poverty schools to enable those children to meet challenging academic content and performance standards. It is the largest elementary and secondary education program in the federal government.) Per-pupil spending in some disadvantaged low-income urban districts is among the highest in the U.S. More funding is not the simple answer, as many evaluations of national compensatory education programs have not been able to show that the additional funds have had clearly positive effects on improving students' educational achievement or other outcomes.

The USG suggests that a reference to the newly released OECD Program for International Student Assessment (PISA) report, "Outcomes of Learning," would be better than the outdated International Adult Literacy Assessment (IALS) data presented in this report. IALS was conducted in 1994, and PISA in 2000. PISA data shows that 12 percent of U.S. 15-year-old students scored at the lowest level one, which is the same as the OECD average. Twelve percent scored at the highest level five, which is better than the OECD average of 9 percent. Germany fared more poorly than the U.S. in this assessment. In addition, summarizing the IALS level-one performance criteria as "barely add two numbers together" is not accurate. Students at level one are able to recognize the main theme of a text, isolate explicitly stated information, and make simple connections between information in the text and everyday life. They are not able to perform the more complex literacy tasks that might be needed to function effectively in today's economy.

C. The First Initiatives of the New Administration

The Bush Administration continues the Education Department's commitment to enforcement of students' constitutional and legal human rights, and this remains one of the Education Department's key missions. As evidenced by the recently passed education bill, the administration has increased spending in education. "Freedom from federal controls" of education is not a thrust of mainstream education reform by any of the governmental, education associations, or respected non-profit education associations of which we are aware. Those in the U.S. who argue for weaker federal influence in local education primarily desire to prevent federal control of local curriculum, and to avoid federal mandates for education improvement that are not accompanied by federal funds.

SECTION III. INTERFACE BETWEEN FOREIGN AND DOMESTIC POLICY

The SR mentions that "Aid conditionally exemplifies the same pattern of problems whether one deals with federal aid to individual States within the United States or with US aid to other countries." We would like to note that the comparison between federal assistance for the constituent states and U.S. foreign aid is inaccurate. U.S. federal assistance to states is vetted through a legislative process in a legislature containing representatives from those states. The U.S. federal government does not have an "aid" relationship with the 50 states.

B. Fiscal ramifications of equal rights for children with disabilities

To the SR's comments that "Such a five-fold increase in the cost of education is the bone of contention in the United States because funding is seen as a zero-sum-game and additional funding for children with disabilities as loss for other children," our response is that the costs of special education is a policy issue not because of the reason stated but because the budgets of many states and school districts are unable to cover the full costs of the program. In discussions leading up to the reauthorization of the Special Education Program (IDEA), Congress is debating the possibility of making special education an entitlement, which would fully fund the program.

D. Whither Education: Free Public Service or Freely Traded Service?

The SR's statement that "Insufficient funding for public education has, domestically and internationally, harmed especially post-compulsory education whose survival as a free public service is at stake" is incorrect. We have not heard U.S. educators say that the future of U.S. post-secondary education is at stake for any reason, including lack of funding. The federal government provides well over 50 billion dollars a year to U.S. post-secondary institutions through capacity-building grants and programs that go directly to universities and also in the forms of grants, loans, and work-study assistance to cover tuition costs for 8.2 million students and parents. Furthermore, in the U.S., public post-secondary education is not free of charge to the students, and has never been considered a "free public service." Parents may choose to send their children to either public or private institutions.

The SR seems to assert that data are not available to measure the quality and costs of U.S. education. This is not accurate. The U.S. Department of Education's National Center for Education Statistics (NCES) is a world leader in the quality, innovation, frequency, and public accessibility of education statistics. NCES' annual publications, "Condition of Education" and "Digest of Education Statistics," contain numerous tables on the very topics listed here: the cost of education, quality of schools, and cost of post-secondary education. (For copies of publications: www.nces.ed.gov.)

SECTION IV. FISCAL ALLOCATIONS FOR PUBLIC EDUCATION

A. Legal Enforcement versus Democratic Decision-Making

Please note that all U.S. states have laws guaranteeing children a free education through secondary school and compels parents to send their children to school between certain ages. School attendance in the U.S. is virtually universal.

In addition, the single largest K-12 federal education program - Title I - attempts to redress the problem being discussed here. Title I provides special additional funds to schools and districts to supplement the education of disadvantaged children. The federal government spends approximately 8 billion dollars a year in this effort.

The footnote by the SR that "The U.S. government holds that the concept of minority does not apply in the United States" is a misstatement. The U.S. government regularly uses the designation "minority" in official documents.

Although the 2000 Digest of Education Statistics is cited for this very surprising figure, "The particular needs of the intake in New York's public schools are impossible due to the funding gap: an annual 40,000 dollars is available in suburban schools but only 4,000 dollars in inner-city ghetto schools," we could not find this figure in that volume, despite a very careful check. Instead, please see the Digest Table 91, entitled, "Revenues and expenditures of public school districts enrolling more than 15,000 students." This table shows the much more likely figure that per pupil expenditure varies from 7,414 dollars in New York City to 9,903 dollars in the upper-middle-class suburb of Yonkers.

B. Localization versus Globalization

The explanation of funding in the U.S. contained in the first two paragraphs in this section is accurate and should help readers understand how disparity arises. The SR should elaborate on how the process of globalization has created greater diversity in local education. As currently written, the discussion of globalization and the new economy seems to be outside the topic of this report.

SECTION V. RACIAL AND GENDER PROFILE OF ECONOMIC EXCLUSION

The paragraph, "The results of the 1950 census presented the country as 89 percent white and 10 percent black; the 2000 census revealed that 12 percent of the people were of South American origin. The term American without a preceding capitalized adjective may well be reserved for WASPS (White Anglo-Saxon Protestants), a term coined by the sociologist Digby Baltzell in 1964," on races and ethnic groups is full of inaccuracies. Please say: 12 percent of the people are of Hispanic (not the same as South American) origin. The term "Hispanic Americans" is preferred over "Latin Americans." The term "American" is not reserved for WASPS and refers to citizens of all races.

The term "minorities" is used to describe groups that individually constitute less than half of the U.S. population, such as Blacks, Asians, Hispanics, and Native Americans. As the SR points out, minorities may indeed constitute the majority of residents in a given school district, county, or state. However, the term "minority" is based upon their representation in the U.S. population as a whole.

The distinction between administrations on this issue by the SR, "Although the previous Administration acknowledged continued racial and ethnic discrimination in education, the new Administration pointed to the need to diminish disparities in learning accomplishments," seems a bit overdrawn. Both the Clinton and the Bush administrations have pointed to the need to diminish disparities in student performance.

A. Coping with Poverty: Mississippi

Although poverty and minority status do tend to be associated with each other, the second paragraph in this section overdraws this association in such a way as to exacerbate the inaccurate stereotype that people from minority groups are mostly poor. For example, even in Jackson, Mississippi, which is classified as one of the nation's "extremely impoverished neighborhoods," only about half of black students are poor. In Jackson, 32 percent of students are eligible for free and reduced price lunch, but 69 percent of the students are black. (See table on child demographics in Craig D. Jerald, "The Urban Picture" at www.edweek.org/sreports/qc98/challenges/tables/urban.html#mj.) Another good source for more accurate data on the association of poverty, race, and educational attainment is the government's own statistics on children: www.childstats.gov/ac1999/toc.asp.

The sentence, "White children go to private schools, large white-owned farms are supposed to generate funding for public schools through property tax," implies that all or even most white children in Mississippi go to private schools. This unlikely assertion needs a citation.

The majority of black women in Mississippi do not, as the SR mentions, "have a pretty baby while at school and become a grandmother in her thirties." This type of commentary feeds the racist stereotype that black girls are promiscuous.

B. The Cost of Denying the Right to Education: New York City

A reference to statistics from the Third International Math and Science Study (TIMSS) on the actual frequency of serious school crime, and to compare violent crime in the U.S. to that in other countries, may be useful in this section. In TIMSS' nationwide survey of U.S. 8th graders, 10 percent of students say that physical injury to other students occurs at least weekly in their school. Other nations participating in TIMSS reported equal or higher levels, including Australia, Chile, Israel, and Korea. See TIMSS International Science Report, 1999, page 268, at www.timss.org.

SECTION VI: CONTROL OVER EDUCATION

A. Freedom of Religion

In response to the SR's assertion that "Initially, the separation between Church and State had been interpreted to require public education to be secular. This was subsequently reversed and further change is likely to ensue," the USG is not aware of a Supreme Court decision that reversed the decision that public education should be secular rather than religious. A citation would be useful in this case.

The SR's discussion on the White House Office of Faith-Based and Community Initiatives does not accurately represent the activities of the Office of Faith-Based and Community Initiatives. This office provides information to churches and other faith organizations about programs in the federal government that offer grants or contracts to the public. The Office facilitates inquiries by faith-based organizations in finding out about these opportunities and applying for them on equal footing with non-faith-based organizations. The Office's mandate is NOT to fund the religious activities of these organizations, as the paragraphs seem to imply.

B. Deciding What Children Should Learn: Kansas

Regarding the SR's comment, "It could easily be anticipated that geology or biology could be examined according to globally accepted definitions of what constitutes knowledge and how well it is transmitted to the young," the USG has worked with over 50 nations to develop an assessment of what constitutes important knowledge in biology and geology, and have administered it to their students (see TIMSS International Science Report, 1999, cited above).

SECTION VII: CONCLUSIONS AND RECOMMENDATIONS

The United States has maintained a commitment to safeguarding the rights of children, domestically and internationally. Most parents make decisions to guide the positive development of their children. In instances where parents harm their children, the federal government has instituted the mechanisms for several programs to deal with these issues. Some of these efforts include eliminating exploitative and hazardous forms of child labor and child abuse.

A number of inaccuracies or selected facts in Ms. Tomasevki's report of her Mission to the United States of America demonstrate a lack of balance in reporting on the education system in the United States. We hope that future reports will present a more balanced picture of U.S. schools.